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DE RUEHNR #0723/01 0740743
ZNY CCCCC ZZH
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FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5064
INFO RUCNIAD/IGAD COLLECTIVE PRIORITY
RUEHDS/AMEMBASSY ADDIS ABABA PRIORITY 9965
RUEHDR/AMEMBASSY DAR ES SALAAM PRIORITY 5860
RUEHDJ/AMEMBASSY DJIBOUTI PRIORITY 5168
RUEHKM/AMEMBASSY KAMPALA PRIORITY 2691
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RUEHLO/AMEMBASSY LONDON PRIORITY 2724
RUEHFR/AMEMBASSY PARIS PRIORITY 2653
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C O N F I D E N T I A L SECTION 01 OF 03 NAIROBI 000723

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E.O. 12958: DECL: 03/12/2018

TAGS: PGOV PHUM PREL KE

SUBJECT: KENYA HUMAN RIGHTS: PRELIMINARY FINDINGS OF UN HIGH COMMISSIONER FOR HUMAN RIGHTS FACT-FINDING MISSION

REF: A. NAIROBI 277

1B. NAIROBI 276

Classified By: Ambassador Michael E. Ranneberger for reasons 1.4 (b and d)

SUMMARY

11. (C) Poloff met with representatives of the UN Office for the High Commissioner Human Rights (OHCHR) investigative team, which recently ended a three-week fact-finding mission to investigate post-election violence in Kenya (ref a). The representatives outlined the team's preliminary conclusions: Rift Valley violence, in significant part, was organized and premeditated, while violence in Nyanza and the Nairobi slums was largely spontaneous. Police response in both cases was found wanting by the team. These preliminary conclusions generally comport with our understanding of the violence. One conclusion worth noting: in spite of other UN-sponsored investigations with contrary findings, the team found no significant increase in gender-based violence. The team has left Kenya and expects to submit its preliminary report to the High Commissioner for Human Rights next week. The High Commissioner is expected to make the findings public, and may use the report as a basis to raise Kenya's case with the UN Human Rights Council. End Summary.

Methodology

12. (C) The five-member OHCHR team spent the last three weeks of February in Kenya visiting 10 locations in Rift Valley, Western, Nyanza, and Central provinces. In each location, team members spoke with local police and civilian authorities, internally displaced people, and local elders. They also visited hospitals. Team leader Roberto Ricci explained his team's "Do No Harm" approach - a conservative posture adopted as a result of previous experiences in Africa where outspoken witnesses later turned up dead. The downside to this approach, Ricci said, is that investigators do leave some stones unturned.

Police Responses

¶13. (C) The team found contradictory evidence as to whether police officials issued "shoot to kill" orders. The team did, however, find preliminary evidence of police shootings at close range and the use of excessive force on multiple occasions. The team noted that further investigation would be needed for each allegation to create a more definitive conclusion. The team noted that police responses to violence varied from highly organized and effective (the sealing off of Nairobi slums was cited) to laissez-faire (in many areas police did not respond to violence at all). The team also found that police took little to no action to stop forced evictions. Overall, the team found that police reactions to the post-electoral violence have created a perception that police only act to protect their own ethnic community.

¶14. (C) Because police officials failed to cooperate, the team was not able to analyze the intelligence available to police in planning their initial responses to the violence. The team was also unsuccessful in attempts to meet with National Security Intelligence Service (NSIS) officials. (Note: Other contacts have noted increasingly poor relations between police and NSIS authorities since the crisis erupted, which have reduced intelligence flows to police and may have negatively impacted police capacity to plan operations. End note.)

Nature of the Violence: Spontaneous in Slums,
Organized in Rift Valley

¶15. (C) The team's general conclusion comports in many ways

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with our understanding of the nature of post-election violence. Violence in Nairobi's slums and Nyanza was largely a spontaneous reaction to the sense that the presidential election was stolen, but also to long-simmering issues such as poverty, unemployment, and inequitable distribution of resources. The team found that the Nairobi violence was easier to contain because there were no significant efforts to organize rioters or to give ideological meaning to the violence. (Note: We have also heard through credible sources that local small-fry political leaders organized violence in these areas for their own purposes and without direction from national leaders. End note.)

¶16. (C) The team concluded that a significant amount of violence in the Rift Valley was planned in advance. The team's conclusion was based on the coordinated nature of attacks (26 separate Rift Valley villages were attacked within 30 minutes of the announcement of presidential election results), the similarity of tactics used in the attacks, evidence that attackers were brought in from outside the location of the attack, and the systematic dismantling of houses in violence-affected areas. The team also found that the sustained nature of the attacks in Rift Valley undercut many or most of the claims by Kalenjin leaders that the violence was a spontaneous reaction to the election.

Internally Displaced Persons:
Trends and Recommendations

¶17. (C) The OHCHR team visited 15 internally displaced persons (IDP) camps. They observed that IDPs who left the camps tended to move to "ancestral homelands" (Kikuyu to Central Province; Luo and Luhya to Nyanza and Western Provinces, respectively) rather than return to their recent homes. IDPs who owned land remained close by, hoping to resettle, while landless IDPs tended to return to their "ancestral homelands", often on short notice with little information on other possible options. The team will recommend that

temporary relocations to "ancestral homelands" should not cancel the right to return.

Gender-Based Violence: Team Finds No Increase

18. (C) After a series of visits and interviews with survivors of gender-based violence (GBV), the OHCHR team reached a preliminary conclusion that GBV did not increase as a result of the post-election violence. The team further concluded that sexual violence had not/not been instrumentalized in the conflict. The team noted a rise in sexual exploitation, particularly in IDP camps, but differentiated this from GBV. (Note: GBV in the post-election period has gotten wide media coverage, mostly with anecdotal evidence implying an increase in GBV. A recent GBV rapid assessment sponsored by other UN agencies reached an opposite, preliminary conclusion: GBV had increased and had become instrumentalized in the conflict. Further studies will likely provide more definitive conclusions about the incidence and nature of GBV in the post-election violence. End note.)

Next Steps: High Commissioner to Decide

18. (C) The team expects to submit its preliminary findings to the High Commissioner for Human Rights, Louise Arbour, next week. The parties to the Annan-led mediation process have already agreed to the team's recommendations for land reform and a mixed Truth and Reconciliation Commission with international and Kenyan commissioners. The High Commissioner is expected to publish the report, but has wide discretion on the level of publicity to give it. Arbour could decide that further investigations are warranted, but would require Kenyan government approval. Arbour also has wide discretion on what parts of the report, if any, to refer to the UN Human Rights Council. If she decides to do so, Kenya could face heightened international scrutiny and possible censure.

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Comment

19. (C) The OHCHR team's preliminary conclusions largely jibe with our understanding of the post-election violence and police responses to it. However, the team's finding that GBV did not increase as a result of the crisis differs from other UN-sponsored investigations and will certainly raise eyebrows if included in the final report. While the High Commissioner has the power to refer Kenya's case to the Human Rights Council, she may decide against it, as the team's key recommendations -- the formation of a Truth and Justice Commission and a commitment to land reform -- have already been accepted in principle by the parties to the Annan-led mediation process. End comment.

RANNEBERGER